II. General Remarks Concerning This Response

Claims 1-39 are currently pending in the present application. Claims 1-8, 10, 11, 13-21, 23, 24, 26-34, 36, 37, and 39 have been amended; no claims have been added; and no claims have been canceled in this response. Reconsideration of the claims is respectfully requested.

III. 35 U.S.C. § 103(a)—Obviousness

The Office action has rejected claims 1-39 under 35 U.S.C. § 103(a) as unpatentable over Shah et al., "Method and platform for interfacing between application program performing telecommunications functions and an operating system", U.S. Patent Number 6,269,396 B1, filed 12/12/1997, issued 07/31/2001, view of Busschbach et al., "Equipment Protections System", U.S. Patent Number 6,202,170 B1, filed 07/23/1998, issued 03/13/2001. This rejection is traversed.

Applicant has amended the independent claims to include features that are not disclosed within Shah et al. nor within Busschbach et al.. For example, independent claim 1 now recites the following features (among others):

> in response to detecting a potential failure of the first instance of the first distributed monitor controller, starting a second instance of the distributed monitor controller;
>
> in response to monitoring the set of resources, generating topology information associated with the set of resources by the second instance of the distributed monitor controller; and
>
> in response to a determination that generated topology information indicates assignment of overlapping scopes between the first instance of the distributed monitor controller and the second instance of the distributed monitor controller, determining a failure of the first instance of the distributed monitor controller based on a communication test.

In the present invention, when a potential failure is detected in a first instance of the distributed monitor controller, a second instance is started, which generates its own topology information for the monitored resources. Concurrently, a separate process is examining the topology information, and a determination is made that the topology information from the two instances is indicating that the two instances are monitoring overlapping scopes; in response, a communication test is made with respect to the first instance to determine if it has failed.

The present invention is directed to a system of monitoring agents that are highly distributed; the database of information that the monitoring agents employ is also highly distributed. When a potential failure is detected within a system, another instance is started before the potential failure is confirmed as an actual failure. Given the highly distributed nature of the system, the second instance is not necessarily started on the same device as the first instance. Essentially, multiple instances of a distributed monitor controller are started, thereby creating scenarios in which redundant agents may be executing during a failover, though not necessarily. When a situation is detected in which multiple agents may be monitoring overlapping scopes, then the system attempts to confirm whether the first instance has indeed failed. A similar set of features is recited within independent claim 10, particularly that a process determines "whether the first network management framework component is a duplicate of a second network management framework component based on whether the first

network management framework component and the second network management framework component have been assigned overlapping scopes". Moreover, the overlapping scopes are detected by looking at the generated topology information, rather than by some other mechanism; this is also due to the highly distributed nature of the system. This set of features is not shown within Shah et al. nor within Busschbach et al.. More importantly, the applied prior art cannot by combined to reach the claimed features of the present invention. Other features are recited in the dependent claims.

Examiner bears the burden of establishing a *prima facie* case of obviousness

The examiner bears the burden of establishing a *prima facie* case of obviousness based on the prior art when rejecting claims under 35 U.S.C. § 103. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985). In response to an assertion of obviousness by the Patent Office, the applicant may attack the Patent Office's *prima facie* determination as improperly made out, present objective evidence tending to support a conclusion of nonobviousness, or both. *In re Fritch*, 972 F.2d 1260, 1265, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992).

The applied prior art references clearly fail to disclose at least one feature of the present invention as recited within each independent claim, notwithstanding the obviousness arguments presented by the Office action, thereby rendering the applied prior art references incapable of being used as primary and secondary references as argued by the current rejection. Moreover, a hypothetical combination of the applied prior art references would also fail to reach the claimed invention of the present patent application. As should be recognized, because the applied prior art references in the rejections fail to disclose the claimed features against which the references were applied, and because the references fail to be combinable to produce these

claimed features, the rejection fails to fulfill the requirements of a proper obviousness argument.

With respect to the claims of the present patent application, Applicant respectfully submits that it would not have been obvious for one having ordinary skill in the art to have used the applied prior art references to reach the claimed invention. Hence, a rejection of the claims cannot be based upon the cited prior art to establish a *prima facie* case of obviousness. Therefore, a rejection of the claims under 35 U.S.C. § 103(a) has been shown to be insupportable in view of the cited prior art, and the claims are patentable over the applied references. Applicant respectfully requests the withdrawal of the rejection of the claims.

IV. Conclusion

It is respectfully urged that the present patent application is patentable, and Applicant kindly requests a Notice of Allowance.

For any other outstanding matters or issues, the examiner is urged to call or fax the below-listed telephone numbers to expedite the prosecution and examination of this application.

DATE: October 3, 2006

Respectfully submitted,

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